

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 20 OF 2022

(Arising from Land Case Appeal No. 38 of 2019 of the High Court of Tanzania, Originating from Land Application No. 10 of 2017 the DLHT for Kagera at Bukoba and Civil Case No.08 of 2017 of Ishozi Ward Tribunal)

SOSTENES KAIZA APPLICANT

VERSUS

NESTORY KAIZA RESPONDENT

RULING

*04/08/2022 & 22/08/2022
E. L. NGIGWANA, J.*

The instant application has been preferred by the Applicant under section 47 (2) of the Land Disputes Courts Act, [Cap 216 R: E 2019], seeking for leave to Appeal to the Court of Appeal of the United Republic of Tanzania against the judgment and decree of this honorable Court (Kilekamajenga J.) in Land Appeal No.38 of 2019 delivered on 6th day of August 2021.

The application is supported by an affidavit sworn by Mr. Aaron Kabunga, learned advocate from Kabunga and Associates Advocates, a law firm representing the applicant. The respondent filed a counter affidavit sworn by Mr. Brighton Mugisha, learned advocate for the respondent resisting the application.

The brief facts giving rise to this application as per available records can be summarized as follows; at Ishozi Ward Tribunal, the respondent,

Nestorty Kaiza successfully sued the applicant Sosthenes Kaiza vide Civil Case No.8 of 2017 for encroaching into his land located at Omukitale Bitame, Nyarugongo Village, alleged to have been in his occupation for 28 years after had been given the same vide execution process.

The Applicant Sosthenes Kaiza was aggrieved by the trial tribunal decision therefore, unsuccessfully appealed to the DLHT for Kagera at Bukoba in Appeal No.10 of 2018. In other words, Appeal No.10 of 2018 was dismissed with costs.

Aggrieved by the decision of the DLHT, the applicant approached this court vide Land Case Appeal No.38 of 2019. After hearing the parties, this court found that there was improper involvement of assessors in the proceedings before the DLHT. Consequently; the proceedings of the DLHT and decision of the DLHT were quashed and set aside. The court went a step further and confirmed the trial tribunal decision.

The applicant was aggrieved by the decision of this court thus; intends to appeal to the Court of Appeal of Tanzania, hence this application. The Notice of Appeal was lodged on 03/09/ 2021.

When the application came for hearing on 4th day of August, 2022, the applicant was represented by Mr. Frank Karoli, learned advocate while the respondent was represented by Mr. Brighton Mugisha, learned advocate.

Taking the floor, Mr. Frank adopted an affidavit supporting the application to form part of his submission. He argued that an appeal to the Court of Appeal is not automatic, thus leave must be sought and obtained that is

why the applicant has filed the present application, and since it originated from the Ward tribunal, what is needed is certification on point (s) of law. Mr. Frank added that, this court, having nullified the proceedings and quashed the decision of the DLHT, the court should have ordered a re-trial so that parties can be heard accordingly in the DLHT. He added that, the act of confirming the trial tribunal decision has closed the door for the applicant from being heard in the DLHT.

On his side, Mr. Mugisha argued that, no points of law demonstrated by the applicant worth of being certified to the Court of Appeal. He added that what was done in this case was to enhance the principle of Overriding Objective. He made reference to section 45 of the Land Disputes Courts Act, Cap 216 R: 2019 and the case of **Israel Malegesi and Another versus Tanganyika Bus Service**, Civil Application No.171/08 of 2020. He ended his submission with the case of **Finca (T) Limited and Another versus Boniface Mwalukisa**, Civil Application No.589/12 of 2018 that the issue of illegality to be certified must be apparent on the face of the record.

However, I would like to state out rightly that, reading the judgment of this court, there is nowhere the Principle of Overriding Objective or section 45 of the Land Disputes Courts Act Cap 216 R:E 2019 was applied to see whether the procedural irregularity committed by the DLHT can be cured or not. Thus the argument by Mr. Mugisha is not supported by the court record.

Indeed, I have carefully considered the submissions from both sides; therefore the issue for determination is whether the applicant has been able to satisfy the court that he has point/points of law worth of being certified for determination by the Court of Appeal.

Section 47(2) and (3) of the Land Disputes Courts Act Cap 216 R: E 2019 provides that;

"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal"

(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.

Reading sub-section 3 herein above, it is apparent that a party wishing to appeal to the Court of Appeal in land matters originating from Ward Tribunals must obtain a certificate from this court certifying that there is a point of law involved.

The reason behind this procedure is to make the matters originating from the Ward Tribunals to come to an end on matters of facts after being decided by the High Court. The exercise is therefore, a screening process which would leave for the attention of the Court only those matters of legal significance. **See Dorina N. Mkumwa versus Edwin David Hamisi**, Civil Appeal No.53 of 2017 CAT (Unreported)

In determining whether there is a point of law in an impugned decision of the High Court worth to be considered by the Court of Appeal, a number of factors have to be considered. In **Mohamed Mohamed & Khamis Mselem versus Omar Khatib**, Civil Appeal No. 68 of 2011, the Court of Appeal of Tanzania at Zanzibar (unreported) held

"a novel point, where the issue raised is unprecedented, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law "

While being guided by the position of the law stated herein above, and having carefully gone through paragraph 4 of the affidavit supporting the application and submissions by Mr. Frank, learned counsel for the applicant, I found that the points raised by the applicant deserve to be certified as points of law worth to be considered and determined by the Court of Appeal. The points are as follows;

- 1. Whether the High Court after it had nullified the proceedings and setting aside the decision of the DLHT on the ground that Assessors were not properly involved in the matter, was legally justified to confirm the decision of the Ward tribunal considering the fact that no appeal lies to the High Court directly from the Ward Tribunal.*
- 2. Whether the High Court was, under the circumstances of this case, legally justified not to order re-trial.*

It should be noted that it is not the duty of this court to determine the merits on the raised points of law but only to be satisfied that they are

triable issues worth to be taken to the Court of Appeal. Since I am satisfied that the application does meet the legal threshold for its grant, the two herein above points are hereby certified as points of law to be taken to the Court of Appeal of the United Republic of Tanzania. Each party shall bear its own costs.

Dated at Bukoba this 22nd day of August, 2022.

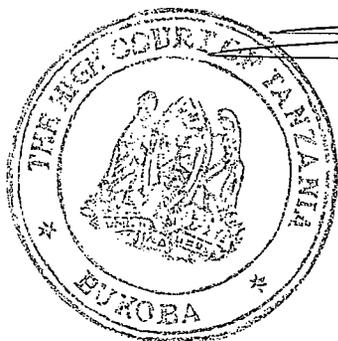


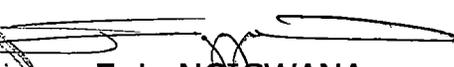

E. L. NGIGWANA

JUDGE

22/08/2022

Ruling delivered this 22nd day of August, 2022, in the presence of the applicant in person, Respondent and his advocate Mr. Brighton Mugisha, Hon. E. M. Kamaleki, Judges' Law Assistant, and Ms. Tumaini Hamidu, B/C.




E. L. NGIGWANA

JUDGE

22/08/2022